



United States Attorney
Southern District of New York

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April 18, 2018

BY ECF AND HAND

The Honorable Kimba M. Wood
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Cohen v. United States, 18 Mag. 3161 (KMW)*

Dear Judge Wood:

As directed, the Government respectfully submits this letter to: (1) update the Court regarding the expected timeline for production of documents and information on electronic devices seized from Michael Cohen; and (2) provide the Court with suggestions for a Special Master, should the Court determine one is necessary in this case. We also propose a date for the next conference to resolve Cohen's motion for the appointment of a Special Master.

First, with respect to the timeline for production of seized material, the Government expects to begin a rolling production by Friday, April 27, 2018, and to complete the production by on or about May 11, 2018,¹ with the possible exception of the content of certain telephones. These dates may be subject to change primarily for the following reasons: (1) because law enforcement has voluntarily refrained from reviewing any of the seized material, including seized electronic devices such as computers and phones, the volume of electronic material on the devices is presently unknown; and (2) it is particularly difficult with respect to telephones to estimate the length of time the downloading process will take. We expect to know within a week whether these or any other issues will materially change the expected production schedule, and will promptly advise the Court and Cohen if such a change is expected. In light of the foregoing, the parties jointly request that the Court schedule a status conference on May 25, 2018 – *i.e.*, ten business days after the currently predicted production date.

Second, the Government continues to believe, for the reasons articulated at Monday's conference, that a Special Master is not warranted to review the seized materials for privilege and that a Government Filter Team would fairly and most efficiently accomplish this task. Indeed,

¹ In addition to providing the materials to Cohen's counsel via an electronic database, the Government has agreed to also provide the material as separate load files, so that Cohen's counsel may utilize its own database, should they so choose. This means that Cohen's counsel should have access to most of these materials well before May 11.

given the above timeline, we note that the review of any material by a Special Master would not commence until at least June. In contrast, the Government's Filter Team could begin reviewing the materials – materials it lawfully obtained pursuant to a judicially authorized search warrant – this month (April), as the electronic device images become available on a rolling basis. Nonetheless, should the Court choose to appoint a Special Master, we believe that the qualifications most pertinent in selecting a Special Master for these circumstances are: (1) neutrality; (2) experience in adjudicating disputes on the specific issue of privilege; (3) deep familiarity with the law of attorney/client privilege, particularly in the context of criminal investigations; and (4) the ability to proceed expeditiously.

To meet those qualifications, we are suggesting three former Magistrate Judges, retired from the bench in this district, all of whom have many years of experience in resolving disputes on the issue of privilege in the context of criminal investigations:

1. Hon. Frank Maas (Ret.), currently associated with JAMS
2. Hon. James C. Francis IV (Ret.), currently Distinguished Lecturer at CUNY Law School
3. Hon. Theodore Katz (Ret.), currently associated with JAMS

The Government has confirmed that each former Magistrate Judge on the Government's list is available to serve as a Special Master, should one be appointed. In the event of such an appointment, the Order of the Court could provide that if the Special Master requests support, such support would be provided. If the Court cannot fund that support, the Government would do so.

Finally, we received earlier today Cohen's list of persons recommended to serve as a Special Master. We are prepared to provide our views on these recommendations, should the Court deem that appropriate.

Respectfully submitted,

ROBERT KHUZAMI
Attorney for the United States,
Acting Under Authority Conferred by
28 U.S.C. § 515

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cc: Todd Harrison, Esq. (by ECF)